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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 376

THE RAMAPO BANK and BROADWAY BANK AND TRUST COMPANY,

Petitioner,

v.

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY OF THE UNITED STATES, and PROSPECT PARK NATIONAL BANK

No. 406

JAMES C. BRADY, Commissioner of the Department of Banking, State of New Jersey,

Petitioner,

v.

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY OF THE UNITED STATES, and PROSPECT PARK NATIONAL BANK

On Petitions for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF FOR THE RESPONDENT, PROSPECT PARK NATIONAL BANK IN OPPOSITION

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Opinions Below

The opinions of the Comptroller of the Currency (Pet. App. 67a-83a)[1] and of the district court (Pet. App. 28a-66a are not reported. The opinion of the court of appeals (Pet. App. 4a-27a) is reported at 425 F. 2d 333, 1970.

Jurisdiction

The judgment of the court of appeals was entered on April 17, 1970. The petitions for a writ of certiorari were filed on July 10, 1970 and July 16, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1245 (1).

Questions Presented

The Prospect Park National Bank, over a period of many years, conducted feasibility studies in an attempt to solve its problem to provide sufficient space at its main office for its customers to conduct their banking affairs and for its employees to perform their duties. After full consideration of the results of such studies, it was determined that it would not be prudent to rebuild and expand at the location of its main office.

A parcel of ground was obtained 2.7 miles from its main office in Wayne, New Jersey, and an application was made under 12 U.S.C. § 30 to move its main office to such location. At the same time a separate application was filed under 12 U.S.C. § 36 to permit the establishment of a branch at its old main office. The results of the feasibility

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[1] "Pet App." refers to the appendix to the petition for a writ of certiorari in No. 376. The New Jersey Banking Commissioner had filed a separate petition for a writ of certiorari in No. 406. "App." refers to the appendix in the court of appeals, a copy of which has been lodged with the Clerk of this Court.

studies referred to above were set forth in full in said applications.

The Petitioners, state chartered banks, and the Commissioner of Banking of the State of New Jersey objected contending that the applications were not bona fide, that Prospect Park National Bank did not intend to move its main office and further that there was no similar provision in the state statutes enabling state banks to make such a move. Their contention was that Prospect Park National Bank should not be permitted to make such a move because, in reality, the move constituted a subterfuge for branching, and the establishment of a branch in Wayne was prohibited under the state law incorporated into federal law by the various sections of 12 U.S.C. § 36 and by the principle of competitive equality.

The questions presented, therefore, are:

(1) Were the applications of Prospect Park National Bank to move its main office 2.7 miles from Prospect Park to Wayne, New Jersey, and to retain its old main office as a branch, bona fide or a subterfuge for branching; and was the determination by the Comptroller, the district court and the circuit court that they were, indeed, bona fide and not a subterfuge for branching, correct or incorrect?

(2) Congress specifically provided in 12 U.S.C. § 36 that state branching restrictions must be complied with by a national bank before it can branch. 12 U.S.C. § 30 does not provide that state restrictions must be complied with by a national bank before it can relocate its main office. If Prospect Park National Bank's applications were bona fide, must it, nevertheless, under some principle of competitive equality, comply not only with state restrictions as to branching but also with state restrictions as to relocation of its main office?

Statute Involved

The National Bank Act, as amended, provides in pertinent part:

12 U.S.C. 30. Change of name or location.

Any national banking association, with the approval of the Comptroller of the Currency, may change its name or change the location of the main office of such association within the limits of the city, town, or village in which it is situated. Any national banking association, (with) the approval of the Comptroller of the Currency, may change the location of the main office of such association to any other location outside the limits of the city, town, or village in which it is located, but not more than thirty miles distant, by the vote of shareholders owning two-thirds of the stock of such association. * * *

12 U.S.C. 36. Branch banks.

The conditions upon which a national banking association may retain or establish and operate a branch or branches are the following:

* * *

(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches:

(1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and

> (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State or State banks. * * *

Statement of the Case

Prospect Park National Bank commenced business in the Borough of Prospect Park. Prospect Park is the smallest municipality in Passaic County, New Jersey, and at the time the bank was chartered, it had a population of 5,909 people. At the time the application was filed in the instant case, the population of Prospect Park had declined to 5,180 people. It is a municipality consisting of four-tenths of a square mile.

To insure growth of the bank despite the declining population of Prospect Park, the management of the bank over the years, continually sought to alter the local nature of the bank. Today it serves residents and business throughout the entire northern New Jersey area, and at the time of filing of the application to move its main office, only 4.2% of its total deposits came from residents of Prospect Park. Because of the success of the management in altering the local nature of the bank, it grew rapidly and its total resources at the time the application was filed exceeded $130,000,000.00.

To accommodate this growth it was necessary to expand its physical plant from time to time. Prospect Park National Bank began business in a remodeled three story frame house. Adjoining homes were purchased over the

years and by a process of remodeling and construction of additions the present structure came into being. The result of this type of expansion is that the building is poorly suited for an operation the size of Prospect Park National Bank.

By 1960 it became apparent that additional space was needed to accommodate customers and employees, because both the public area and the working area were intolerably congested. The Board of Directors engaged in a long-range study of the problem. Upon completion of the lengthy and exhaustive study, the Board of Directors, noting the lack of growth potential in the area, the congestion and crowded conditions at its existing location, the excessive cost of expanding and rebuilding at the existing location (in excess of 1½ million dollars) and the natural shift of population and business to the suburban areas, concluded that prudent management dictated the relocation of its main office.[2]

Accordingly, applications were filed with the Comptroller of Currency for permission to relocate its main office a distance of 2.7 miles to a location in Wayne, New Jersey, which is actually on an extension of the same road on which its Prospect Park office is located. An application was also filed to establish a branch in Prospect Park at its old office.

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[2] The applications submitted by Prospect Park National Bank contains photographs of the various stages of expansion of its office at Prospect Park which graphically demonstrate the difficulties the Bank had with its physical facilities. There was also filed with the application voluminous details showing the studies made by the bank as to its need for additional facilities and the affect on its operations because of the lack of these facilities. See App.244a-497a.

A National Bank Examiner was assigned by the Comptroller's Office to investigate the applications and the following is an excerpt from his report recommending approval:

> "The present head office building located in Prospect Park is approximately forty-three years old. Lobby space and parking space is very limited and working space is inadequate for the volume of business transacted. The bank has received estimates to construct a new building on their present head office site at a minimum cost of $1,500,000. However, they would have to utilize approximately seventy-five percent of their parking area. Management estimates that they have lost approximately $4,000,000 to $5,000,000 in existing and potential deposits in the last three to four years due to this overcrowded condition." App. 252a

The competing banks as well as the Commissioner of Banking and Insurance of New Jersey requested a hearing on Prospect Park National Bank's applications. At the conclusion of the hearing, the Regional Administrator recommended approval of the application, the Director of the Comptrollers Bank Organization Division and two Deputy Comptrollers of the Currency recommended approval. The Comptroller, on April 8, 1969 in a ten page written opinion, approved the two applications. The Comptroller agreed that Prospect Park National Bank would not be justified in spending a substantial sum of money to enlarge its existing building or to build a new one at that location. The Comptroller found:

> "The proposed relocation of the main office of the Prospect Park National Bank is in all ways bona fide; that it is a prudent and necessary step

> to enable the applicant bank to continue serving both its shareholders and its depositors; that it will serve the public interest by establishing a banking office in Wayne Township where additional banking facilities are needed; that existing banks in the area will not be adversely affected; and that the application of the Prospect Park National Bank to relocate its main office from 124 Haledon Avenue in Prospect Park to Hamburg Turnpike in Wayne Township should be approved."

The Comptroller also approved Prospect Park National Bank's application to retain its old office as a branch and concluded that the many senior citizens and employees of small retail and service establishments located in Prospect Park could use convenient banking facilities.[3]

The Petitioners appealed the decision of the Comptroller to the District Court alleging in Paragraphs 23 through 26 of their complaint as follows:

> "23. Approval of defendant Prospect Park's applications by defendant Comptroller was arbitrary, capricious, an abuse of discretion, and not in accordance with the law.
>
> "24. Approval of defendant Prospect Park's applications by defendant Comptroller was contrary to plaintiffs' Constitutional rights to due process of law.

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[3] The Petitioners *have conceded that the* establishment of a branch in Prospect Park does not violate state requirements on branching. The only banking establishment in Propect Park is that of the Respondent, Prospect Park National Bank. It is also conceded that the Repsondent, Prospect Park National Bank, meets all other requirements of 12 U.S.C. § 30. Petitioners argue that the 2 applications although separately proper become improper when filed together.

"25. Approval of defendant Prospect Park's applications by defendant Comptroller was in excess of the limitations of 12 U.S.C. § 30 and 12 U.S.C. § 36 (c).

"26. Approval of defendant Prospect Park's applications by defendant Comptroller was unwarranted by the facts."

Judge Shaw, after reviewing the voluminous record, concluded:

> "In this particular case, I find no evidence which would support a conclusion that the proposed relocation of the main office of the Prospect Park National Bank is nothing but a mere subterfuge." (Pet. App. 53a)

Judge Shaw then went on to sustain the decision of the Comptroller. He stated,

> "There is ample evidence from the record before the Comptroller to justify his opinion that the office in Wayne would be a main office and not a branch." (Pet. App. 60a)

Judge Shaw's opinion was appealed to the Third Circuit Court of Appeals.

The Court of Appeals (Biggs, Kalodner and Freedman, J.J.) unanimously affirmed the decision of Judge Shaw. The Petitioners argued before the Third Circuit as they do again here that Prospect Park National Bank and the Comptroller were engaged in some scheme to evade the restrictions of state law. In regard to this argument, Judge Kalodner, speaking for the Court, stated:

> "We find equally without substance the Appellants' contention that the Comptroller and Prospect Park National Bank jointly engaged in a subterfuge to evade state branching laws." (Pet. App. 17a)

Concluding the courts findings on the question of the bona fideness of the application, Judge Kalodner stated:

> "On review of the record, we are of the opinion that it amply supports the District Court's critical findings that the Comptroller's approval of Prospect Park National Bank's applications were not arbitrary, capricious or an abuse of discretion; and that such approval was bona fide, free of collusion and in compliance with the applicable provisions of Section 30, which we hold to be controlling." (Pet. App. 26a-27a)

In response to the Petitioners' contention that the bona fides of a main office relocation when joined by a branch retention must be measured against state branching laws and policy, the Court said:

> ". . . We are of the opinion that branching considerations are inapplicable to the main office relocation of a national bank and that the bona fides of the relocation is governed solely by the statutory provisions of Section 30 of the National Banking Act." (Pet. App. 21a)

In response to the Petitioners' contention that regardless of the bona fides of the Prospect Park National Bank's applications, the doctrine of "competitive equality" between state and national banks requires that Section 30 be read together with and limited by the provisions of Section 36 (c) 2 the court said that

> "It is clear, insofar as congressional history is concerned, that nothing in the language of Section 30 or in the commentary generated by its passage in 1886, and amended in 1959, permits the inference that state law was intended to govern the movement of national bank main offices." (Pet. App. 22a)

The court after considering additional arguments of Petitioners in support of their "competitive equality" argument concluded:

> "In light of the foregoing we find without substance appellants contention that state law restriction must be read into the National Bank Act whenever, as in the case of main office relocations, state and national banks are arrayed in competing positions." (Pet. App. 24a)

Finally, the court of appeals held that the record fully supported the district court's "extensive findings concerning the adequacy of the hearing afforded appellants and the completeness of the administrative record" and sustained the District Court's decision. (Pet. App. 24a-27a)

Reasons for Denying the Writ

The reasons advanced by the Petitioners for granting the writ are essentially:

(1) The decision below in the Third Circuit Court of Appeals conflicts with that of the Seventh Circuit Court of Appeals in the case of *Marion National Bank of Marion* v. *The Van Buren Bank*, 418 F. 2d 121 (1969).

> (See argument No. 1 on page 7 of Brief of Petitioner Ramapo and No. C on page 8 of the Brief of Petitioner Brady)

(2) The principle of compeititve equality developed in the *Walker* case and *Dickinson* case and the legislative history of 12 U.S.C. 36 (c) (2) requires the limitations of Section 36 to be read into Section 30.

(See argument No. 2 on page 9 of Brief of Ramapo and A on page 4 of Brief of Brady)

(3) The case is an important one. Petitioner Brady makes this a separate point in his brief (page 7) and it is incorporated in argument No. 2 of Petitioner Ramapo.

Phrase the arguments as they will, essentially the Petitioners' arguments are based on the contention that the respondent Prospect Park National Bank engaged in a subterfuge to create a new branch and was not in fact relocating its main office. The bona fidedness of Prospect Park National Bank's applications has been established by each tribunal below and the legal arguments advanced by the Petitioners before this court have already been fully argued before the district court and the circuit court of appeals and clearly and concisely disposed of by each court. We shall once again briefly consider each of the contentions of the Petitioners.

(1) Conflict in Decisions

The decision below and the decision in the *Marion* case are not in conflict. It is true that the result in each case is different; however, the rationale in each case is the same. In other words, the common thread in each case is that if the move of a main office is bona fide, branching restrictions of the State do not apply. If, however, the move of the main office is not bona fide, then branching restrictions do apply. Therefore, in the instant case, the Courts below determined the move to be bona fide and affirmed the decision of the Comptroller, whereas in the

Marion case the Court found the move to be a subterfuge and not bona fide, and found the action of the Comptroller to be arbitrary and capricious. Both Courts applied the same principle of law, but because of the difference in the facts in each case the application of the law led to a different result.

To demonstrate the similarities and the differences in the instant case and the *Marion* case, we will briefly consider the facts in each case and the application of the law to these facts by each Court.

The Circuit Court in the *Marion* case did not recite the facts of the case in its opinion, instead it appears that it relied on the findings of fact made by the District Court and accepted them without discussion. The District Court reports the following to be the facts in the case: The Van Burean Bank, a state bank, was controlled by a group of persons who had acquired seven other state banks in northeastern Indiana. In August 1963 this group sough to move each of the banks under their control into a county seat. In 1964 they sought to establish a branch of one of its banks just outside the city limits of Marion, and the State Commissioner denied the application. In January 1966 this group sought a new State charter in Marion to be located on property controlled by the group. This application for a new charter was also denied by the State. This group, being frustrated in their attempt to place a bank in Marion, thereafter went to the Regional Administrator and indicated that they were interested in converting all of their banks into National Banks and that they were interested in moving the Van Buren Bank into Marion. Applications were filed to accomplish all of these events. A National Bank Examiner was directed to investigate the application of the Van Buren Bank, to

move its main office to Marion, and twice he recommended that the application be denied. The Comptroller, nevertheless, approved the applications.

The District Court, after considering all of the facts, stated: "While the physical facilities and contemplated operating characteristics of the new facility in Marion are significant, they do not require this court to blind itself to the total scope of the activities here involved, nor to disregard their historical background." (App. 123a)

The District Court then went on to say: "The clear preponderance of the evidence in this case is that the plan which Van Buren Bank and the Comptroller characterize as a 'relocation' of the 'main office' in Marion coupled with a 'branch' into Van Buren is in fact intende as a subterfuge for what is essentially an attempt by an established bank in Van Buren, Indiania, to establish a branch in Marion." (App. 124a)

The Court stated: ". . . a careful examination of the law and cases applicable convinces this court that there is only one final determination which is directly relevant, *i.e.*, does the proposed action, taken as a whole and under the facts and circumstances of each case, constitute a valid exercise of the discretion of the Comptroller of the Currency or does it constitute a scheme and subterfuge intended to circumvent the Congressional purpose. No two cases are the same. Each must stand or fall on its own circumstances." (App. 130a, 131a)

It concluded: "This court's findings are limited to the facts and circumstances of *this* case; and in this case Van Buren Bank's proposed 'relocation' is a subterfuge for an attempt to branch, and the Comptroller's approval in *this* case is therefore subject to the limitations upon

branching set out in 12 U.S.C. Section 36 (c)." (App. 133a) Note that the Court, by providing emphasis under the word "*this*", made it clear that it was limiting its decision only to the case under consideration because of its findings of fact.

With this background in mind, it is clear that the Circuit Court accepted completely the findings of subterfuge made by the District Court. It said: "As we see it the issue is whether Indiana law would affirmatively permit a state bank to branch in like manner under like circumstances." p. 123. The Circuit Court, therefore, considered the case only as a branching case.

Compare the facts in the *Marion* case with those in the instant case and the distinction is immediately apparent. In the instant case the applications were preceded by a thorough study of the physical problems of the bank building by architects. Studies were made of population trends. Analysis were made of location of customers. Statistics were developed to show the loss of deposits unless affirmative action was taken.[4] In the instant case the field examiner assigned to investigate the applications recommended approval, whereas in the *Marion* case the field examiner on two separate occasions recommended that approval be denied. In the instant case the Regional Administrator, the Director of the Comptrollers Bank Organization Division, the two Deputy Comptrollers of the Currency, the District Court and the Circuit Court found that the applications were bona fide and not a subterfuge to branch. In the *Marion* case, both the District Court and the Circuit Court found that the applications were not bona fide and that they were a subterfuge to engage in branching.

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[4] See voluminous material submitted with application. (App. 244a-497a)

With these facts in mind, we can compare what the Courts in the Seventh Circuit said about the applicable law with what was said by the Courts in the Third Circuit. In the Seventh Circuit, the District Court said: ". . . a careful examination of the law and cases applicable convinces this court that there is only one final determination which is directly relevant, *i.e.* does the proposed action, taken as a whole and under the facts and circumstances of each case, constitute a valid exercise of the discretion of the Comptroller of the Currency, or does it constitute a scheme and subterfuge. . . ." (App. 130a, 131a) In the Third Circuit, the District Court said, ". . . the only issue here that merits consideration is whether in fact, as established by the record, the relocated main office would be in fact a main office of the Prospect Park National Bank and not a branch . . ." (Pet. App. 60a) Is it not true then that both District Courts conceived their duty to be identical? The Court of Appeals for the Seventh Circuit, having accepted the finding of the District Court that the application was a subterfuge, stated, "We affirm the judgment solely upon the basis that the maneuver proposed involves creation of a branch which would not be authorized to state banks by the state law of Indiana and is, therefore, not authorized for national banks by 12 U.S.C. Section 36 (c)." p. 125. Had the court determined that the relocation of the main office was bona fide it would have sustained the Comptroller's decision. The Court said: "Relocation of a national bank is permitted in certain circumstances and with the approval of the Comptroller, by 12 U.S.C. Section 30. The propriety of the move is not made to depend on state law." p. 123. The Court of Appeals for the Third Circuit stated, "On review of the record, we are of the opinion that it amply supports the District Court's critical findings that the Comptroller's approval

of Prospect Park National Bank was not arbitrary, capricious or an abuse of discretion; and that such approval was bona fide, free of collusion and in compliance with the applicable provisions of Section 30 which we hold to be controlling." (Pet. App. 26-27a) In summary then, are not the courts in both circuits saying, the original determination as to whether or not an application of a national bank to move its main office is bona fide or a subterfuge for branching is up to the Comptroller—if the Comptroller has not abused his discretion in determining the application to move a main office to be bona fide, the provisions of 12 U.S.C. Section 30 apply and his decision will not be disturbed—if the Comptroller has abused his discretion in determining the application to be bona fide and the application is in fact to permit a branch then the court will set aside this determination and the court will apply the restrictions of 12 U.S.C. Section 36 (c).

This is, indeed, the proper view to take of the cases in both circuits. Each of the courts considered the cases of *Traverse City State Bank* v. *Empire National Bank,* 228 F. Supp. 984 (W. D. Mich. 1964) and the *Merchants and Miners Bank* v. *Saxon,* Unreported Opinion of Kent, C. J. No. 1042, W. D. Mich., N. D. July 13, 1966. The District Court in the Seventh Circuit did not say it disagreed with the holding of these two cases, it merely stated that in these two cases the court apparently felt the applications were bona fide and hence the court in these instances correctly determined that state limitations on branching did not apply to national banks but that in the case which it had before it for determination, the application was not bona fide and, therefore, the state limitations on branching did apply. The Court of Appeals for the Seventh Circuit apparently did not consider, at least in its reported opinion, the *Merchants* case, and believed the

Traverse City case did not apply because it was decided prior to the *Walker Bank* case. In view of the fact that the Court of Appeals believed the case before it to be one of branching, its reliance on the *Walker* case, which dealt solely with branching, is understandable.

It is not every difference in result in the decisions of the Circuit Court of Appeals that should be resolved by the Supreme Court. Clearly where the decision of each court was determined principally on the facts before it, the Supreme Court need not and indeed should not review the case. Further, it must be pointed out that even the difference in results in the two cases have been brought into harmony because the Van Buren Bank by following the Circuit Court's suggestion moved its main office to Marion, closed its old office for a few days and then reopened it as a branch. Thus the Marion case and the instant case are for all practical purposes in harmony both as to result and the law.

(2) Competitive Equality Argument

The principle of competitive equality which the Petitioners seek to apply in the instant case is not applicable. Once the Court has determined the bona fidedness of the application under 12 U.S.C. Section 30, the question of competitive equality drops out of the case. The principle of competitive equality only applies to those cases involving the creation of a branch and, therefore, if the court determines that the move of the main office is genuine and bona fide, then it need not consider the question of whether or not state and national banks are "competitively equal" insofar as the establishment of a main office is concerned. The Petitioners' "competitive equality" argument is actually an alternative argument. In other words, they are saying that even if the applica-

tions of Prospect Park National Bank are bona fide in all respects, the doctrine of "competitive equality" between state and national banks requires that Section 30 be read together with and limited by the provisions of Section 36 (c) 2. Their argument is that a national bank's relocation of its main office becomes subject to whatever limitations a state may impose on the relocation of a state bank's main office when such an application is accompanied with an application to retain a branch. The argument runs that even though 12 U.S.C. Section 30 does not provide that state limitations on location of a main office apply to a national bank, it must be inferred because it is only fair under the doctrine of "competitive equality" that it be inferred. The Petitioners seek authority for this position by relying on (a) principles of statutory construction, (b) legislative history and (c) the *Walker Bank* case and *Dickinson* case.

As to the Petitioners' reliance on the statutory construction principle of *pari materia* the Circuit Court said: ". . . the language and history of the two sections (Section 30 and 36) is clear and unambiguous, and it is quite obvious that the sections have independent statutory scope and purpose. Thus the statutory construction principle has no application here." (Pet. App. 22a)

In response to the Petitioners' reliance on congressional history the court said "It is clear, insofar as congressional history is concerned, that nothing in the language of Section 30 or in the commentary generated by its passage in 1886 and amended in 1959 permits the inference that state law was intended to govern the movement of national bank main offices. It is equally clear that when Congress enacted Section 36 (c) in 1927 and substantially amended it in 1933 nothing was said concerning the incorporation of state banking laws into Section 30." (Pet. App. 22a)

The Court finally disposed of the Petitioners' reliance on the *Walker Bank* case by stating that "It was conceded in Walker Bank that the activity in question constituted branching. The only question before the Court was the extent to which Section 36 (c) adopted state law restrictions on branching. The issue here (instant case) is whether Section 36 (c) was intended to adopt or to permit state law restrictions to govern the *non branching* functions of national banks. One searches in vain for evidence of such an intention in the clear language and congressional history of Section 36 (c)." (Pet. App. 23a).

In commenting on the *Dickinson* case the Court concurred with the observation of Mr. Chief Justice Burger that even in matters of branching Congress was quite specific as to which provisions of state law were to be incorporated. The fair implication from both the Circuit Court's remark as well as the observation of Mr. Chief Justice Burger is that the principle of "competitive equality" cannot be extended to situations other than those where Congress specifically said it should apply. This is further substantiated by a careful review of the cases cited in the *Walker* case as precedent for the establishment of the principle of "competitive equality". The thread running through all of the cases cited is that insofar as the day to day activities of a national bank are concerned, (pledge of assets, transfers in anticipation of insolvency, transfer of securities, escheat law), national banks should be competitively equal to state banks and that each bank should be able to do what the other bank does. These cases, however in no way limit the principle that state law cannot affect the corporate powers or privileges of a national bank unless Federal law incorporates the state law. Thus in the case of branching, Federal law specifically incorporates the restrictions

of state law. This was not done in the case of relocation of a national bank's main office. Where Congress has legislated upon a subject which is within its constitutional control and over which it has the right to assume exclusive jurisdiction and has manifested an intention to deal therewith in full any state legislation on the subject is void. The states have no right to interfere or by way of compliment to legislation of the Congress, proscribe additional regulations and what they deem auxiliary provisions for the same purpose. This principle was clearly established by Chief Justice Marshall in *McCulloch* v. *Maryland*, 4 Wheat. 316 (1819) and was most recently reaffirmed by the Supreme Court in *First Agricultural National Bank of Berkshire* v. *State Tax Commissioner*, 392 U. S. 339 (1968).

(3) Importance of the Case

Both the Petitioner Ramapo and the Petitioner Brady seek to create the impression with the Court that because of the decision of the court below, uncertainty has been injected into the state regulation of branch banking and there may now be motivation by state banks to convert to national banks.

The fact of the matter is that the decision below does not create any uncertainty in the law insofar as a national bank is concerned. The four cases which have considered the question, namely *Traverse City* case, the *Merchants and Miners* case, the *Marion* case and the instant case clearly lay down the principle that if an application is, under 12 U.S.C. § 30, bona fide, then state restrictions regarding branching do not apply and that if the application is not bona fide, but is a subterfuge to establish a branch which would not otherwise be allowed, then state branching restrictions do apply to a national bank.

The only uncertainty that exists is that which exists in the state law of New Jersey as to whether or not a state bank may move its main office to a neighboring community.

The respondent, Prospect Park National Bank, briefed this point in both the District and the Circuit Courts in response to the Petitioners argument of competitive equality. It was contended before these Courts that the New Jersey statutes did not clearly indicate that a state bank could not move its main office. It was conceded by the Respondent below that such a decision on New Jersey law was not necessary to the determination of the case. The Circuit Court apparently agreed with this contention and in footnote No. 34 (Pet. App. 21a) of its Opinion it stated: "It is not clear from the face of these sections that a state bank would be precluded from entering Wayne by moving its principal office." They further indicated that disposition of the case, however, made it unnecessary to resolve this issue.

The uncertainty as to the law, if indeed there is any, is in regard to state law and not federal law and the resolution of this problem is better left to the state courts.

As to the point raised by the Petitioners that the decisions below may result in many state banks converting to national banks, it must be pointed out that the facts in this case are extremely unique. Nearly every municipality in Passaic County, New Jersey, and for that matter, throughout the State, in which there is some chance for successful operation of a bank, already has the main office or a branch of a bank located therein. This is particularly so since the liberalized branching laws in the State of New Jersey were enacted. Thus, in the great majority of cases, although a national bank would be able

to move its main office pursuant to Section 30, it would not be able to retain its old office as a branch because to do so would violate the branching restrictions imposed by 12 U.S.C. Section 36 (c) 2. In the instant case, Prospect Park National Bank may establish a branch in Prospect Park because no other state or national bank is located in that community. In nearly every other municipality there is already a bank and, therefore, no branch could be established in such municipality.

If Ramapo were a national bank it might be conceivable that it could move its main office to some other municipality, but it could not establish a branch in Wayne because of the existence of other banks there. Similarly, if the Petitioner, Broadway, were a national bank, it could move its main office out of Paterson, but it could not retain a branch there because other banks are already established in Paterson.

The banks which can make applications similar to Prospect Park National Bank are extremely few in number. Such a bank must first be able to prove the bona fideness of its application and secondly must show that the establishment of a branch would be in accord with state restrictions. The Petitioners' fears that there will be a flood of applications similar to that filed by Prospect Park National Bank are without foundation in fact.

CONCLUSION

The Petitioners have had a full and complete review of all factual and legal determinations in the District Court and the Circuit Court below. Each finding of fact unequivocally stated that the applications were bona fide. The District Court and the Circuit Court reviewed all of the legal arguments now being advanced before this

court and clearly and concisely rejected each of the arguments and based their rejection on established principles of law. As set forth herein, the difference in the *Marion* case and the instant case was only one of result and not the application of established principles of law and even the result in each case has been brought into harmony because the Van Buren bank has indeed established its main office in Marion and retained its office in Van Buren as a branch. The Petitioners have failed to show that the crucial finding of bona fideness made by all of the tribunals below is incorrect and they have further failed to establish that the principles of law argued by them are applicable to the instant case. There is no warrant for a further review by this court.[5]

Respectfully submitted,

JEFFER, WALTER, TIERNEY, DEKORTE, HOPKINSON & VOGEL, ESQS.,
By: HERMAN JEFFER, ESQ.

[5] Prospect Park National Bank has relocated its main office in Wayne, New Jersey, and is presently operating in a temporary structure pending the completion of its new main office building, pictures and plans of which were submitted with the applications.